

AT A SPECIAL JOINT BOARD OF SUPERVISORS/TOWN COUNCIL MEETING HELD
AT GERMANN'S DANIEL TECHNOLOGY CENTER, 18121 TECHNOLOGY DRIVE, ROOM
221 ON THURSDAY, JUNE 18, 2009.

Board Members Present:

William C. Chase, Jr., Chairman

Larry W. Aylor, Vice-Chairman

Sue D. Hansohn

Steven E. Nixon

Brad C. Rosenberger

Tom S. Underwood

Steven L. Walker

Staff Present:

Frank T. Bossio, County Administrator

Roy B. Thorpe, Jr., County Attorney

John C. Egertson, Planning Director

Paul Howard, Environmental Services Director

Donna B. Foster, Deputy Clerk

Karrie L. Hill, Assistant to the Deputy Clerk

Town Council Present:

William M. Yowell, Vice-mayor

Calvin L. Coleman

Duke M. duFrane

F. Steve Jenkins

Michael T. Olinger

James C. Risner

Christopher H. Snider

Town Staff Present:

Jeff Muzzy, Town Manager

Robert Bendell, Town Attorney

Carter Glass, Special Town Attorney

Kimberly Allen, Town Clerk

Robert H. Thornhill, Jr., Public Works Director

Chris Hively, Environmental Services Director

Town Members Absent:

Pranas A. Rimeikis, Mayor

Robert M. Ryan

CALL TO ORDER

Mr. Chase, Chairman, of the Board of Supervisors, called the meeting to order at 5:33 p.m. Mr. Yowell, Vice Mayor, of the Town Council, called the meeting to order at 5:33 p.m.

APPROVAL OF AGENDA - ADDITIONS AND/OR DELETIONS

Following a brief discussion, Mr. Underwood moved, seconded by Mr. Aylor, to approve the agenda as published.

Mr. Chase called for voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Rosenberger, Underwood, Walker

Motion carried 7 to 0.

Town Council approved its agenda as published.

UNFINISHED BUSINESS

Chairman Chase noted the Board's purpose for the joint meeting was to consider pending litigation, water and sewer service and other matters of common interest with the Town. Vice Mayor Yowell noted Council's agenda had Amendment to the 2003 Water & Sewer Agreement between the County and Town as its order of business.

Mr. Bossio stated he had been chosen to start the discussions. He noted both sides had been trying to develop a document that would solve two problems: 1) how to serve County customers in the short-term, and 2) how to achieve the establishment of a water and sewer authority. He believed the document before the two bodies could meet those two goals. He stated in order to approve the amendment to the 2003 Water and Sewer Agreement the Town had requested that the County remove the law suit it had brought against the Town. The proposed amendment also provided for a one year period to negotiate the water and sewer authority. He noted staff and the attorneys had approached the development of the proposed amendment on the basis that everyone wanted to solve these problems.

Mr. Muzzy added that he believed this was a good example/model on how the Town and County could work together. He noted the process brought the sides together with a number of frank and sometimes heated discussions. He stated that staff and the attorneys were unanimously forwarding the proposed amendment for approval. Mr. Muzzy believed this was a very opportune time to be working together whether it be for the sake of court cases, wastewater allocations, fiscal health, or economic interest. He said the group was very pleased to be presenting the proposed amendment.

Mr. Carter Glass, Special Attorney for the Town, addressed the Board and Council providing a brief work background history on his associations with the Town and fellow attorneys present. He stated Mr. Bossio and Mr. Muzzy had requested that he and Mr. Thorpe do two things to advance the discussions: 1) to briefly summarize the proposed amendment, and 2) to provide their rationale for the amendment and why they believed it was a reasonable compromise.

Mr. Glass reviewed the four key components of the proposed amendment:

- 1) It would temporarily resolve the County's lawsuit by providing for a voluntary dismissal of the suit which could be refiled and it would avoid any contested annexation proceeding that the Town might be interested in pursuing.

- 2) It would address the County's short-term needs for water and sewer capacity. He discussed how the County's immediate needs would be addressed and what the County would be allowed to do.
- 3) A good faith negotiation period of one year was granted (unless both sides agree more time is needed) to create a joint regional water and sewer authority and to provide for voluntary boundary line adjustment.
If either party breaches its obligations under the agreement, then remedies are provided. He provided examples of possible breaches and remedies.
- 4) In the event negotiations are not successful, the final section of the proposed amendment provides for an orderly termination of the current water and sewer arrangements between the Town and County. Basically, the 2003 Agreement would cease to exist and each locality would separate its water and sewer services to its citizens. A repayment to the County of the 3.3 million dollars would have to be made following certain stipulations as outlined. Also, a transitional five year period is provided for should negotiations fail, because the Town realizes that the County would need a period of time to make alternative arrangements to serve its existing customers.

Mr. Glass pointed out that when the staff and attorneys had met that afternoon for their final review session, they realized that a technical correction was needed in Section 4.3 where a reference to the capacity for Terramark and Eastern View High School was needed. This was needed to clarify that the County would be allowed to use the current capacity allocated for these particular customers.

Mr. Glass stressed the hard work and number of hours that had been put into the proposed amendment and how the County's suit posed risks for both sides. He noted the 2003 Agreement was not well drafted and posed questions on interpretation. He stated even if the County won the case in the end it may receive very little capacity because the agreement says the Town will make surplus capacity available. Also, if the suit continued nothing would happen in the meantime so both sides lose. He stated from the staff and attorneys' view the proposed amendment would preserve the opportunity to resolve an issue that has been going on for 15 or more years.

He noted both sides stood to gain something; therefore, both should try to negotiate. Mr. Glass stressed the savings to be earned if the facilities and resources are joined and the boundary adjustment is attained uncontested. If the negotiations are unsuccessful, there is an orderly parting of ways provided and the 2003 Agreement is unclear on how termination will

work. Mr. Glass stated the group that crafted the proposed amendment believed it was a reasonable compromise, because each side would be gaining and giving up something and it would be a win-win outcome for the entire community.

Mr. Thorpe stated Mr. Carter had covered the details of the proposed amendment and all he wished to add was that it was clear to him that the Town and County have struggled with how to address growth issues for years and the governing bodies had attempted to come to cooperative agreements in the past as evidenced by the 2003 Agreement. He stated unfortunately there is a disagreement on how to apply the 2003 Agreement which is why everyone was present and why there was a court case filed. He noted what he thought was important to consider is that what was before the Board and Council was something that a judge could not provide. He noted a judge would be limited in what decisions he could hand down and would not be allowed to create a regional authority or boundary adjustment. Mr. Thorpe stated their duty as legal counsel to the Board and Council was to represent the best interests of their client and bring about a solution which would be in everyone's best interest. He believed it was an opportunity for the governing bodies to decide, rather than a judge, and he hoped the proposed amendment would act as a conduit to achieve this purpose.

Mrs. Hansohn thanked the staff for all the work done on the proposal. She stated the County wanted to create a regional water and sewer authority and the Board wanted to see a solution and the members had reviewed the document. She noted the Board had three concerns: 1) the Town and County have had two agreements in the past and they have not been honored and the Board would like some type of assurance that this time everyone was serious and all parties would work toward a solution. She stated the Board had been disappointed before and would like some assurances and reasons on why another attempt should be made; 2) there may be a need for more than 30,000 gallons per day in order to address the County's growing needs and Mrs. Hansohn questioned if the capacity figure could be increased to 50,000 and if it was not needed, it would not be used. She believed this would help reduce the chances of having to renegotiate in a year or so; and 3) the Board would like to negotiate the connection fees downward, because it did not feel that the rates should be 200% more than the Town's.

Mr. duFrane in response, first thanked the staff and attorneys for what they had accomplished in a fairly short time noting it was a marvelous job. He commented on Mrs. Hansohn's first point stating that it would be a wasted effort if everyone did not move forward in good faith. He stated everyone he had spoken to on Council was committed on getting it done because it did not think anything was more important than the regional water and sewer

authority and a comprehensive boundary adjustment. Mr. duFrane stressed his faith in the Council and Board members accomplishing their goal in reaching an agreement.

Mr. duFrane stated he did not believe there would be a problem with granting 50,000 gallons per day capacity and although there may be some concern with the fees being lowered, he believed the request could be honored. He pointed out that the Town had hired a very expensive attorney and that he would like to see the 12 month negotiation period be lowered to 10 months so the expenses would be less.

Mr. Glass explained that the proposed amendment was a legally binding document and its length was due to it having to cover everything questionable. He believed it was a much better document than the 2003 Agreement and eliminated some of the ambiguities.

Mr. Yowell believed the capacity issue could be addressed at this meeting; however, he was not sure Council was in a position to address the request to lower the fees at this time.

Mr. Chase stated he could support cutting the negotiation period to six months. Mr. Thorpe noted part of the reason the timeframe was at 12 months was because the type of agreement needed would have to be submitted to the Commission on Local Government and by Statute, the Commission has a minimum of six months to review the document and it was not uncommon for the Commission to take more than that. However, currently the Commission was not over tasked, so hopefully it will not take longer than six months. He stated hopefully the majority of the work on the document would be completed this summer and it could be submitted to the Commission in the early fall. Then it was out of the local governments' hands until the Commission makes its recommendation. Mr. Glass agreed with Mr. Thorpe's statements.

Discussion ensued relative to the timeframes and the process of getting the Commission's and Court's approvals with Mr. Glass pointing out that the document provided a provision for an extension of time if needed. Mr. Thorpe explained that all the attorneys present had experience with submissions to the Commission and he personally had been in recent contact with the Commission. He believed it may take less time due to the fact that the Commission is currently not as busy; however, the Commission could not promise a shorter review schedule.

Mr. Glass emphasized that if the two bodies approved the document at this meeting then it would be effective immediately and would not have to go to the Commission. If the two governing bodies enter into an agreement that deals with a joint regional authority and boundary adjustment, then that document would have to go to the Commission on Local Government.

Mr. Chase questioned and Mr. Glass explained the difference between the 2003 Agreement and the proposed amendment agreement. He noted the 2003 Agreement was lacking in three areas: payments to be made, how capacity was defined, and how to terminate the agreement. He said they had tried to clearly cover all of these areas in the document presented at this meeting.

Mr. Chase questioned Mr. Glass' statement that the 2003 Agreement would "go away" and wanted to know when this would occur. Mr. Glass explained that the group drafting the addendum had realized that this might be the final opportunity for the two bodies to try and negotiate an authority and voluntary boundary adjustment. If it is concluded that the two bodies just cannot agree on these, the last section of the proposed agreement provides that the 2003 Agreement will end. Then both the Town and County would be responsible for providing their own water and sewer services after a five year transitional period. Mr. Chase pointed out then the County would have no document to discuss in court.

Mr. Thorpe further explained that if the Town broke off its negotiations or failed to negotiate in good faith then the County could refile its case or another litigation to enforce the 2003 Agreement. At the end of the one year, if there has been good faith negotiations and there is still no agreement, then that is when the 2003 Agreement would cease and the County would have five years to disconnect from the Town's system and go on its own. Mr. Glass briefly discussed the problems with how the 2003 Agreement was written.

Mrs. Hansohn noted the two main objectives were to create a joint authority and to establish a boundary line agreement. She suggested that the bodies agree on a timeline for putting together the authority agreement and if this could not be accomplished in the set timeframe then it would be indicative of not proceeding further. She suggested they should be able to work out something on the authority within sixty days.

Mr. Risner suggested this type of discussion should be held after the proposed amendment had been signed. He noted he believed all three of the major concerns expressed by the County could be addressed and Council should be able to do this in 2 to 3 days and once the amendment had been settled upon then the timelines Mrs. Hansohn had suggested could be considered.

Mr. Yowell believed Council could agree to the amendment at this meeting with the capacity change. Mr. Coleman stated he could agree to all of the County's requested changes and Mr. duFrane's suggested change to 10 months. He noted there was a Town election in May and he would like to have something settled before then.

Mr. Underwood stated he agreed with what Mr. Risner was stating in terms of the order in which things should flow. He briefly discussed the connection fees. Mr. Coleman stated it involved approximately 10 customers and he would like to just get the amendment done.

Mr. Yowell stated Council had hoped to come in and have an agreement reached at this meeting. Mr. Coleman stated he was ready to vote and offered to make a motion.

Mr. Risner requested further clarification on the tap fee issue.

Mr. Hively explained that the tap fee included in the proposed amendment was the out-of-town tap rate which was 1 ½ times higher than the in-town rate for a 5/8 inch meter (residential connection). The other tap rate was 2 times the in town rate which was consistent with what the Town charges customers as part of the 2003 Agreement. A lengthy discussion ensued relative to connections fees with Mr. Underwood noting that Mr. Hively had mentioned that the rates were consistent with the 2003 Agreement; however, Mr. Underwood believed that the 2003 Agreement called for charging the best in town rate. Mr. Hively noted he had misspoken and meant that it was consistent with the third party agreements. The issue was discussed further.

Mr. Risner questioned if the tap fees would come from the 3.3 million dollars that the County had previously paid. Mr. Thorpe stated yes. Mr. Risner stated since there would be no additional monies then it may not be in their best interest to spend time discussing this issue further. Mr. Underwood stated he was concerned with the end user and in the current economic times he wanted to especially look out for the customers.

Mr. Nixon questioned what happened if the County exceeded the 3,500 gallons per hour limit discussed in Section 2.4. Mr. Hively noted the intent was to set a peak for the security of the system and to encourage good stewardship on the part of the customer by trying to prevent the 30,000 gallons per day from being used all at once. He noted there was not a penalty charge. Mr. Nixon stressed the need to have everything specifically addressed in the agreement to avoid having similar problems to those experienced with the 2003 Agreement. Further discussion ensued with Mr. Walker noting his concern with the statement in the same sentence concerning 'previously- approved customers' and noted the reason the County desired more capacity was to be able to add in customers. Mr. Glass clarified that a provision within the proposal allowed for the addition of customers.

A discussion was held on the rates and master meters.

Mr. Jenkins noted he was ready to approve the amendment and noted when there was a good compromise, all parties leave a little disappointed. He questioned if the water and sewer authority was agreed upon, would the transfer of assets need to go to referendum. Mr. Muzzy

noted it would require a referendum or charter change. Mr. Thorpe noted this was a question for the next round of discussion and believed there was more than one way to address this issue.

Mr. Jenkins questioned if the last MOU signed was being scrapped. Mr. Risner noted this would be good for discussion after signing this proposed amendment. Mr. Jenkins noted unfortunately the groups were meeting now because of the County's litigation and because the two bodies were not working together. He did not want to agree to something again and then later hear that it had not been agreed to. Mr. Risner believed they could learn from prior mistakes and that a legal document was before the groups. He believed both sides were getting something out of it and it was better for the community. He said he would like to see the agreement reached and then start the hard discussions.

The members discussed whether or not the request to increase the capacity to 50,000 gallons per day, lower the rates to 1 ½ times the Town's in-town rates and whether the negotiation period should be 10 or 12 months. Mr. Muzzy stated the 12 months had been allowed because there was a lot of work to be accomplished; however, consideration should still be given to keeping the timeframe as short as possible to avoid additional attorney fees, etc.

Mr. Rosenberger questioned if he could be given a clear statement on whether or not the Council considered the MOU as the basis for a start, because the two bodies would not be meeting at this time if the MOU had been consummated.

Mr. Yowell agreed it was an agreement of understanding; however, a lot of things had changed and it was not a legally binding document. Mr. Rosenberg believed it was a basis for starting. Mr. Underwood noted the outline of the regional authority and the boundary line adjustment map were key components of the MOU and he believed it would be good to know if these would be used. Mr. Jenkins stated this was his point earlier, because he believed the majority of the members had approved that document.

Mr. Risner believed that both parties will look at all of this and go forward once this amendment is signed. He did not believe these types of issues could be solved at this meeting.

Following further brief discussion, Mr. Coleman moved, Mr. Risner seconded, to accept the proposed Amendment to the 2003 Water and Sewer Agreement between the County of Culpeper and Town of Culpeper with the following changes: increase the 30,000 gallons per day to 50,000 gallons per day and reduce the availability fees from 200% to 150%.

Mr. Yowell called for voice vote.

Ayes – Coleman, duFrane, Jenkins, Olinger, Risner, Snider, Yowell

Absent – Rimekis, Ryan

The motion carried 7 to 0.

Mr. Underwood stated he would still like to know if the intention was to start with the same water and sewer authority outline and boundary line adjustment map that was discussed a year ago. He stated he was not asking to discuss the details, just whether or not they were two major things that would be used for the upcoming discussions.

Mr. Risner noted since Council had completed its business, he offered a motion to adjourn. Mr. Chase and Mrs. Hansohn questioned if this was getting off to a good start.

Mr. Risner stated this was an item that should be discussed once the agreement was signed.

Mrs. Hansohn, in response to Mr. Underwood, stated her thought was similar to Mr. Risner's and that the discussion should be held at the next meeting and set the perimeters and timeframe on the two things that they want to achieve. She believed they would look at everything possible. Mr. Nixon on a positive note stated it was possible that the two parties could come up with something even better.

Mr. Aylor noted the term 'good faith' had been used a great deal and he questioned if this term truly had any 'teeth' in it.

Mr. Thorpe did not believe there was a clear definition for 'good faith'; however, he would hope the pressure on both governing bodies would be to do their best job. He said it would not be desirable to go before a judge and explain that the bodies had not met the 'good faith' effort.

Mr. Aylor questioned what more was being achieved by signing this amendment than could have been achieved with the 2008 MOU?

Mr. Thorpe stated there was a commitment to negotiate a settlement which would lead to creating an authority and boundary line adjustment. He reemphasized the points of the amendment.

Mr. Aylor thanked the Council for negotiating on the capacity issue and connection fees; however, the motion to adjourn had not given him a warm and fuzzy feeling.

Mr. Underwood explained that he was hesitant to sign an agreement and then discuss the next steps. He stated he would certainly tell everyone where he stood and he thought this was showing good faith. He said if there was a difference in opinion on the water and sewer authority outline and boundary line adjustment he would like to know this before signing another agreement.

The discussion continued with Mr. Nixon noting that he believed those asking questions were doing it so everyone would have a clear understanding and once it is signed everyone would be on the same page.

A question was raised on when the next meeting could be established. It was anticipated that it would be mid-July.

Following further discussion, Mrs. Hansohn moved, Mr. Nixon seconded, to approve the Amendment to the 2003 Water and Sewer Agreement between the County of Culpeper and the Town of Culpeper with the following changes: increase the 30,000 gallons per day to 50,000 gallons per day and reduce the availability fees from 200% to 150%.

Mr. Underwood noted he was not going to support the motion but it was not because he did not want to have a joint authority because he did want one very much and had worked on the prior agreements. He said he had a problem supporting the motion when he did not know the basis from which they would be working. Mr. Chase said he disagreed, because he was running on the assumption that they would have to use the existing documents to begin with. Mr. Underwood said he wished someone had said that.

Mr. Aylor asked if by signing the document tonight then the County was agreeing to drop the suit immediately. Mrs. Hansohn stated unless there is a breach of the Amendment.

Mr. Walker asked what it would take to refile the suit. Mr. Thorpe stated basically it was a matter of changing the date on the document and carrying it over to the court. He anticipated the process would be move fairly quick.

Mr. Aylor noted he was going to support the motion since the Town Council had a unanimous vote and he would take them at their word. He agreed things had changed since 2003 and the bodies needed to move forward.

Mr. Rosenberger noted it was a shame that they had to be meeting; however, that was the past now and he hoped with the decision made at this meeting they could move forward.

Mr. Chase called for a voice vote.

Ayes – Aylor, Chase, Hansohn, Nixon, Rosenberger, Walker

Nays – Underwood

The motion carried 6 to 1.

Mr. Yowell after a brief discussion with Council members clarified that the Council had not adjourned.

Mr. Coleman moved, Mr. Risner seconded to authorize the Vice Mayor to sign the amendment document.

Mr. Yowell called for a voice vote.

Ayes – Coleman, duFrane, Jenkins, Olinger, Risner, Snider, Yowell

Absent – Rimeikis, Ryan

The motion carried 7 to 0.

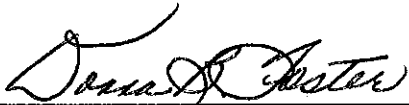
A recess was declared at 7:09 to allow the time for staff to make the approved changes prior to the amendment document being signed.

The meeting reconvened at 7:41.

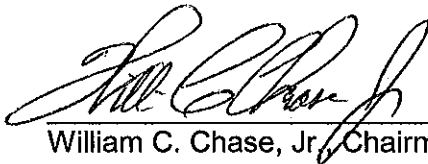
Mr. Chase and Mr. Yowell signed the Amendment to the 2003 Water and Sewer Agreement.

ADJOURNMENT

The meeting adjourned at 7:42.

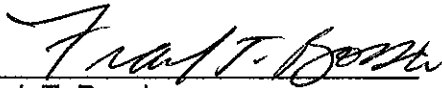


Donna B. Foster, MMC
Deputy Clerk



William C. Chase, Jr., Chairman

ATTEST:



Frank T. Bossio
Clerk to the Board